IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1000 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

VADODRA MUICIPAL CORPORATION KAMDAR KARMACHARI UNION

Versus

BARODA MUNICIPAL CORPORATION & ANOTHER

---

Appearance:

1. Special Civil Application No. 1000 of 1991

MR RD RAVAL for the Petitioner

MR PRANAV G DESAI for Respondents Nos. 1-2

---

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 02/12/2004

ORAL JUDGEMENT

The petitioner, a former employee of the respondent - Vadodara Municipal Corporation (hereinafter referred to as "the Corporation") challenges the action of the Corporation in initiating disciplinary proceeding against the petitioner and questions the validity of the charge-sheet dated 8th April, 1989.

The facts are not in dispute. The petitioner then a Sheristedar in Filaria Department of the Corporation, on reaching the age of superannuation, retired from service of the Corporation in the month of August, 1987. On 8th April, 1989 a disciplinary proceeding came to be initiated against the petitioner by issuing a charge-sheet. It has been alleged that during the years 1981-1982 the petitioner committed financial irregularities in purchasing larvicidal oil. The service conditions of the employees of the Corporation are governed by the provisions contained in the Bombay Civil Services Rules (hereinafter referred to as "the Rules").

Learned advocate Mr.Raval has appeared for the petitioner and has submitted that clause (a) of Rule 189-A of the Rules provides for continuation of disciplinary proceeding against a delinquent servant after he retires from service if such disciplinary proceeding were initiated while such servant was in service. Clause (b) of Rule 189-A provides that, "such departmental proceeding if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.---

(i) xxxxx xxxxx xxxxx

(ii) shall not be in respect of any event which took place more than 4 years before such institution;

(iii) xxxxx xxxxx xxxxx"

Mr.Raval has submitted that there is a statutory prohibition against the initiation of disciplinary proceeding after a servant retires from service in case where incidence in question took place more than 4 years before such institution. In the present case, for the alleged incidence of the year 1981-1982 disciplinary proceeding has been initiated in the year 1989 i.e. more than 7 years after the incidence and after retirement of the petitioner. The initiation of disciplinary proceeding against the petitioner is, therefore, illegal, null and void.

Learned advocate Mr.Desai has appeared for the Corporation and has contested the petition. He has submitted that it is not true that disciplinary

proceeding has been initiated in the year 1989. He has submitted that in fact the disciplinary proceeding was initiated against the petitioner in the year 1984 while he was still in service but, as the matter was pending before the vigilance commission for enquiry, a formal charge-sheet came to be issued after receipt of the report of the vigilance enquiry. He has relied upon the explanation sought from the petitioner in the month of May, 1984. In the submission of Mr.Desai, as the disciplinary proceeding had been initiated while the petitioner was in service clause (b) of Rule 189-A of the Rules shall not be attracted. The Corporation is under an obligation to complete the said proceeding as envisaged in clause (a) of the said Rule 189-A.

I am unable to agree with Mr.Desai. It is well settled that a disciplinary proceeding can be said to have been initiated when a formal charge-sheet is issued. There is no dispute that in the present case the formal charge-sheet was issued upon the petitioner in the month of April, 1989. The communication of May, 1984 calling upon the petitioner to explain the alleged irregularity cannot be said to be the charge-sheet or initiation of disciplinary proceeding. Pendency of the preliminary investigation is not the initiation of disciplinary proceeding. Further, explanation to the very Rule 189-A provides that, "a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date:" It is not in dispute that in the present case, pending preliminary investigation, the petitioner was not placed under suspension.

In view of the aforesaid explanation and the settled law, I am of the view that the Corporation has no right or authority to hold disciplinary proceeding against the petitioner after his retirement from service in the year 1987 for the incidence of the year 1981-1982. The petition is, therefore, allowed with cost. The impugned charge-sheet dated 8th April, 1989 (Annexure-"A" to the petition) is quashed and set-aside. Rule is made absolute.

( Ms. R.M.Doshit, J. )

/sakkaf